Bentley Hedges Travel Service, Inc. *and* General Drivers, Chauffeurs and Helpers, Local Union No. 886. Case 16-CA-9004

September 21, 1982

DECISION AND ORDER

On January 29, 1981, Administrative Law Judge Jay R. Pollack issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge only to the extent consistent herewith.

Respondent operates a travel service with several branches in Oklahoma and Texas. In February 1980,[1] employees Moorman and Stacy, who worked at Respondent's Penn Place office in Oklahoma City, drafted a letter to Bentley Hedges, Respondent's president,[2] outlining a number of complaints that the employees had concerning wages, benefits, and working conditions. The letter also requested that Hedges hold a meeting with all the employees to discuss their concerns. On February 23, they brought the letter to George Harrison, Respondent's vice president of group sales and operations, whom the Administrative Law Judge found to be a managerial employee.[3] Harrison expressed sympathy and general agreement with the employees' concerns and, after several "additions" were made to the letter,[4] the three made copies to distribute to the other employees. They then decided that Harrison would personally deliver the letter to Bentley Hedges.

On February 27, Harrison presented the letter to Bentley Hedges in the presence of Alice Hedges, Respondent's secretary-treasurer. According to Harrison, Bentley Hedges "kind of chuckled," but Alice became angry, told Bentley that "you have got trouble now," and suggested he "fire whoever wrote this letter and close down the operation." During the conversation, Harrison told the Hedges that he had taken part in writing the letter.

On the following morning, Bentley Hedges spoke privately with employee Stacy. He showed her the letter and asked if she had anything to do with it. She told him that she helped write it but refused to answer his inquiry as to who else was involved. He told Stacy that the same thing had happened at the Company several years before and that a few employees had tried to hold a "kangaroo court," but he had gotten rid of the "troublemakers." Hedges said that anyone who was unhappy could quit. However, he agreed to meet with the employees "as individuals," which he did shortly thereafter. At this meeting, Hedges told the Penn Place employees that he knew "trouble was brewing" and there were "instigators," that he had the same problem years ago but "had gotten rid of the troublemakers," and that, because of this letter, employees Moorman and Finney would not receive scheduled pay raises. Finally, Hedges stated that it was his company and he would run it his way, adding that, if any employees did not like it, they could leave.

On February 29, Harrison and four employees visited the offices of Local 886 and asked for help. They were told that, if more employee interest could be generated, the Union would attempt to help.

On March 1, Hedges spoke with employee Jan Strickland, a friend of Harrison who had begun training for a job with Respondent on February 25. He told her that she was doing a "real good" job and could go on the payroll as soon as she wanted. It was agreed that Strickland would begin working for pay on March 3. During the course of this conversation, Hedges mentioned that there was "some trouble brewing," that some people were "stirring the stick," and asked her if she had heard anything. He noted that there had been a similar occurrence some years ago and that he had "gotten rid of the ringleaders and everything had worked out okay."

On Monday evening, March 3, 14 of Respondent's employees, including Harrison and Strickland, attended a meeting at the Union's offices. All signed authorization cards and it was agreed that the Union would send Respondent a telegram that evening naming the signers. After the meeting, Harrison, Strickland, and Hedges' niece, Aimee Fallwell, went to dinner. After dinner Harrison drove the two women back to Respondent's offices, arriving at approximately 12:45 a.m. Bentley Hedges, who had received the telegram between 10 and 10:30 p.m., was waiting for them in the parking lot. He told Harrison that he was fired and that "I told you not to get involved with organiz-

[1] All dates refer to 1980.

[2] Hedges and his wife Alice are the only shareholders in Respondent.

[3] Although the Administrative Law Judge did not specifically find Harrison to be a supervisor, he did find that Harrison's opinion concerning at least one prospective new hire was sought out by Respondent and that, on one occasion, Harrison participated with Respondent's president, Bentley Hedges, in a decision to terminate an employee and later to give that employee a second chance. The record also reveals that Respondent's owners were away from the office for substantial periods of time, leaving Harrison as the highest ranking official at Respondent's main office. From the foregoing, we find that, in addition to being a managerial employee, Harrison was also a Sec. 2(11) supervisor.

[4] Harrison testified that, after the employees gave him the letter, "we rewrote" it. He did not indicate what parts of the list of complaints were included at his behest, stating only that he "added a few points . . . ."

ing employees and you have gone too far." He also told Strickland that she too was fired. Later that morning, Harrison and Strickland returned to Respondent's office and asked Hedges why they were fired. Hedges responded that he could not talk about it and that the matter was being handled by his lawyer.

On the morning of March 4, employee Brenda Clink overheard two telephone conversations between Hedges and certain unknown parties. In the first conversation, Hedges told someone that he had "gotten rid of the troublemakers." Clink further testified that, in the second conversation, Hedges told someone from the Associated Travel Network that "I guess you heard about my problem," that the "same thing happened five years ago and he had gotten rid of the troublemakers then" and that he had the "same problem every six months or so and he had to get them back into line."

The Administrative Law Judge found that Respondent violated Section 8(a)(1) by interrogating Strickland and by threatening employees with discharge and loss of raises if they engaged in concerted or union activity. He further found that Respondent violated Section 8(a)(3) and (1) by discharging employee Strickland for engaging in union activity. We agree. The Administrative Law Judge, however, further found that Harrison's discharge violated Section 8(a)(1) of the Act since it was part of a "pattern of conduct" aimed at discouraging the exercise of Section 7 rights by employees. In so doing, he relied on the Board's Decision in, *inter alia, Nevis Industries, Inc., d/b/a Fresno Townehouse*,[5] and *DRW Corporation d/b/a Brothers Three Cabinets*.[6] We reverse.

In *Parker-Robb Chevrolet, Inc.*,[7] we held that the protection of the Act does not extend to supervisors discharged or otherwise disciplined for engaging in union or other concerted activity. In so doing, we overruled *Nevis Industries, Inc., d/b/a Fresno Townehouse* and *DRW Corporation d/b/a Brothers Three Cabinets* to the extent those cases held that a violation is established when the supervisor's discharge is part of a "pattern of conduct" directed against employees and/or when the discharge is motivated by a desire to thwart employees' Section 7 rights.

Similarly, managerial employees are excluded from the protection of the Act,[8] and we believe that they, like supervisors, may be discharged or otherwise disciplined for engaging in union or other concerted activity.[9] Here, Respondent discharged Harrison for engaging in union activity along with the statutory employees. Although Respondent was not free to discharge employee Strickland for such activity, Harrison, unlike Strickland, was a managerial employee and excluded from coverage under the Act. Accordingly, Respondent's discharge of Harrison was not unlawful.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Bentley Hedges Travel Service, Inc., Oklahoma City, Oklahoma, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Threatening employees with discharge or with the loss of wage increases if they act concertedly in seeking to discuss or improve their wages, benefits, or working conditions.

(b) Interrogating employees concerning the activities of employees in concertedly seeking to discuss or improve their wages, benefits, or working conditions.

(c) Discharging or otherwise discriminating against employees with regard to hire or tenure of employment or any term or condition of employment for engaging in activities on behalf of General Drivers, Chauffeurs and Helpers, Local Union No. 886, or any other labor organization, or for engaging in activity protected by Section 7 of the Act.

(d) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed under Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Offer Jan Strickland immediate and full reinstatement to her former position of employment or, if such job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights and privileges previously enjoyed.

(b) Make whole Strickland for any loss of earnings she may have suffered by reason of Respondent's discrimination against her, in the manner set forth in the section of the Administrative Law Judge's Decision entitled "The Remedy."

[5] 246 NLRB 1053 (1979).
[6] 248 NLRB 828 (1980).
[7] 262 NLRB 402 (1982).
[8] *N.L.R.B. v. Bell Aerospace Company, Division of Textron, Inc.*, 416 U.S. 267 (1974).
[9] See *Curtis Industries, Division of Curtis Noll Corporation*, 218 NLRB 1447 (1975).

(c) Expunge from its files any reference to the discharge of Jan Strickland and notify her in writing that this has been done and that evidence of this discharge will not be used as a basis for future personnel actions against her.

(d) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Post at its facilities in Oklahoma and Texas copies of the attached notice marked "Appendix."[10] Copies of said notice, on forms provided by the Regional Director for Region 16, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director for Region 16, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

MEMBER JENKINS, dissenting:

Contrary to my colleagues, I would find that George Harrison's discharge violated Section 8(a)(1) of the Act. Managerial employees, of course, are excluded from the protection of the Act. However, there is no doubt, and the Administrative Law Judge so found, that Harrison's discharge, following on the heels of Respondent's other unlawful conduct, was the principal element in a plan designed to intimidate Respondent's employees and halt the union movement. Under these circumstances, and for the reasons set forth in my separate opinion in *Parker-Robb Chevrolet, Inc.*, 262 NLRB 402 (1982), I would find the discharge violative of Section 8(a)(1) of the Act.

[10] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

The Act gives employees the following rights:

To engage in self-organization

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To engage in activities together for the purpose of collective bargaining or other mutual aid or protection

To refrain from the exercise of any or all such activities.

WE WILL NOT threaten employees with discharge or with the loss of wage increases if they act concertedly in seeking to discuss or improve their wages, benefits, or working conditions.

WE WILL NOT interrogate employees concerning the activities of employees in concertedly seeking to discuss or improve their wages, benefits, or working conditions.

WE WILL NOT discharge or otherwise discriminate against employees with regard to hire or tenure of employment or any term or condition of employment for engaging in activities on behalf of General Drivers, Chauffeurs and Helpers, Local Union No. 886, or any other labor organization, or for engaging in activity protected by Section 7 of the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed under Section 7 of the Act.

WE WILL offer Jan Strickland immediate and full reinstatement to her former job or, if such job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other right or privileges previously enjoyed; and WE WILL make her whole for any loss of earnings she may have suffered by reason of our discrimination against her, with interest.

WE WILL expunge from our files any reference to the discharge of Jan Strickland and notify her in writing that we have done so and

that evidence of this unlawful discharge will not be used as a basis for future personnel actions against her.

BENTLEY HEDGES TRAVEL SERVICE, INC.

DECISION

STATEMENT OF THE CASE

JAY R. POLLACK, Administrative Law Judge: This matter was heard by me in Oklahoma City, Oklahoma, on October 30 and 31, 1980.[1] On April 18, the Regional Director for Region 16 of the National Labor Relations Board issued a complaint and notice of hearing, based on an unfair labor practice charge filed by General Drivers, Chauffeurs and Helpers, Local Union No. 886, herein called the Union, on March 5. The complaint alleges in substance that Bentley Hedges Travel Service, Inc., herein called Respondent, engaged in certain violations of Section 8(a)(1) and (3) of the National Labor Relations Act, as amended, 29 U.S.C. § 151, *et seq.*, herein called the Act. The parties were permitted during the hearing to introduce relevant evidence, examine and cross-examine witnesses, and argue orally. Only the General Counsel filed a post-hearing brief.

Upon the entire record made in this proceeding, including my observation of the demeanor of the witnesses, I make the following:

FINDINGS OF FACT AND CONCLUSIONS

I. JURISDICTION

Respondent is an Oklahoma corporation engaged in the operation of a travel agency, with its main office and principal place of business in Oklahoma City, Oklahoma. Respondent also maintains branch offices in Tulsa, Norman, Lawton, and Oklahoma City, Oklahoma, and Fort Worth, Texas.

During the 12 months preceding issuance of the complaint, Respondent received gross revenue in excess of $500,000 from its business operations, and, during that same period of time, Respondent made sales in excess of $50,000 directly to customers outside the State of Oklahoma.

The complaint alleges, the answer admits, and I find that Respondent is now, and at all times material herein has been, an employer engaged in and affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The Union is affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America. The complaint alleges, the answer fails to deny, and I find that the Union is now, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

[1] Unless otherwise stated, all dates hereinafter refer to calendar year 1980.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background and Issues*

As noted above, Respondent operates a travel agency with several offices, including two offices in Oklahoma City. During February, several of Respondent's employees at its 50 Penn Place office in Oklahoma City began discussing their dissatisfaction or disappointment with certain working conditions. Employees Mary Moorman and Susan Stacy drafted a letter to Bentley Hedges, Respondent's president, requesting a meeting of all employees with Hedges to discuss the employees' concerns about wages, benefits, and working conditions. On February 23, Moorman and Stacy brought the letter to George Harrison, Respondent's vice president of group sales and operations. Harrison generally agreed with the employees' concerns and added some of his own concerns to the letter. On February 27, Harrison presented the letter, as amended, to Hedges. After not receiving their desired response from Hedges, the employees contacted the Union. On March 3, 14 employees signed union authorization cards on behalf of the Union and the Union sent a telegram to Hedges seeking representational rights. At approximately 12:45 a.m. on the morning of March 4 Harrison and employee Jan Strickland were terminated.

Within this factual framework, the General Counsel contends that Respondent violated Section 8(a)(1) of the Act by interrogating employees about their union activities and desires; by threatening employees with discharge or other reprisals if they engaged in union activities; by telling employees it would withhold wage increases if they engaged in union activities; by granting wage increases to discourage union activities; by announcing additional insurance benefits to discourage union activities; by threatening to close its business and fire all its employees if they engaged in union activities; and by creating the impression it was keeping the union activities of its employees under surveillance. Further, the General Counsel contends that Respondent violated Section 8(a)(3) and (1) of the Act by discharging George Harrison and Jan Strickland because of their union activities. Respondent denies all such allegations. It further contends that Harrison was not an employee within the meaning of the Act and, therefore, not entitled to the protection of the Act.

B. *Managerial Status of George Harrison*

1. The facts

George Harrison began his employment with Respondent in November 1975 as a travel consultant. In October 1976, Harrison married Angela Hedges, Respondent's executive vice president and the daughter of Bentley and Alice Hedges, Respondent's president and corporate secretary, respectively. In July 1977, Harrison was promoted to the position of vice president of group sales and operations. Harrison was one of the four corporate officers. There were only two stockholders, Bentley and Alice Hedges, and there was no board of directors. Harrison was in charge of group sales, which included

selling, and all other aspects of group travel and tours; e.g., airline and hotel reservations. Harrison informed Respondent's employees at its several locations of company policy and available trips and tours. He accomplished this by frequent trips to the branch offices as well as by issuing a company newsletter.

Harrison had the authority to commit the Company's credit. There was conflicting testimony as to whether Harrison had the authority to hire or fire employees. However, it is undisputed that Bentley Hedges sought out Harrison's opinion before hiring the office secretary and jointly decided with Harrison, first to discharge that secretary and later to give the secretary another chance because of mitigating circumstances. It is further undisputed that Harrison attended corporate meetings. The corporate meetings were generally informal gatherings of the four corporate officers. Harrison also attended the few formal meetings held by the corporation. At these meetings, the management of the Company was discussed; e.g., budgeting problems or the opening of a new branch office. Harrison's opinion on all matters was requested and considered and generally a consensus was reached. However, on the one occasion that Harrison's opinion differed from that of Alice Hedges, Harrison was quickly told to keep his opinion to himself.

With regard to compensation, Harrison received substantially higher pay than the other employees. Further, he received an executive bonus in addition to a share in the profit-sharing plan participated in by employees. Harrison's life was insured by the Company along with the lives of the three other corporate officers. The Company leased an automobile for Harrison's use and paid all his automotive expenses. Harrison was able to travel on trips, at least once bringing a friend, at company expense, conditions which were not available to employees. Moreover, Harrison received expense-paid trips from hotel airlines, which trips were available only for executives of travel agencies. Further, it must be noted that Bentley and Alice Hedges were leading tours and away from the office for substantial periods of time, leaving Harrison as the highest ranking official at Respondent's main office.[2] There is conflicting testimony regarding whether Harrison or the comptroller was in charge during the absence of Mr. and Mrs. Hedges. However, there is no reason to resolve that conflict as Harrison was clearly in charge of group sales, a substantial aspect of the business, in the absence of Bentley Hedges.

In June 1979, Harrison and Angela Hedges were divorced. However, Harrison remained with the Company in the same capacity and experienced no change in job duties or responsibilities.

2. Analysis

The United States Supreme Court has stated that it is the intent of Congress to exclude managerial employees from the protection of the Act although it is not reflected in express statutory language. *N.L.R.B.* v. *Bell Aerospace Company*, 416 U.S. 267, 281–282 (1974). Managerial employees are defined as those who "formulate and effectuate management policies by expressing and making operative the decisions of their employer." *N.L.R.B.* v. *Yeshiva University*, 444 U.S. 672 (1980); *N.L.R.B.* v. *Bell Aerospace Company, supra* at 288. These employees are so much higher in the managerial structure than supervisors, which Congress specifically excluded in Section 2(3) of the Act, that Congress thought no specific exclusionary provision was necessary. *N.L.R.B.* v. *Yeshiva University, supra*, citing *N.L.R.B.* v. *Bell Aerospace Company, supra* at 283. Normally an employee may be excluded as managerial only if he represents management's interests by taking or recommending discretionary actions that effectively control or implement employer policy. See, e.g., *Sutter Community Hospitals of Sacramento*, 227 NLRB 181, 193 (1976), cited with approval in *N.L.R.B.* v. *Yeshiva University, supra*, fn. 15.

In the instant case, Harrison held an executive-type position clearly more aligned with management than with employees. There should be no doubt that Harrison was a managerial employee. The General Counsel argues, however, that Harrison did not possess managerial authority on the grounds that his authority was exercised collectively and that final authority rested with the two stockholders, Mr. and Mrs. Hedges. Similar arguments were rejected in the *Yeshiva* case. The Court found that ultimate authority cannot be a prerequisite to supervisory or managerial status, since in every corporation ultimate authority is vested in the board of directors.[3] The fact that authority is exercised collectively is equally unpersuasive as many management decisions are formulated and implemented by committees. For the reasons expressed above, I find that Harrison was managerial and not an employee within the meaning of the Act.

C. *The Alleged 8(a)(1) Violations*

As noted above, during February, several of Respondent's employees began discussing their dissatisfaction or disappointment with their working conditions. A letter setting forth the employees' concerns was drafted by employees Mary Moorman and Susan Stacy. On February 23, Moorman and Stacy brought the letter to Harrison at Respondent's main office. Harrison voiced general agreement with the letter and raised some additional points. The letter was retyped and Harrison agreed to present the letter to Hedges.

After 6 o'clock on February 27, Harrison presented the unsigned letter to Bentley Hedges. Hedges read the letter and chuckled. Alice Hedges entered the room and also read the letter. She became angry and told her husband that he "had trouble now" and should "fire whoever wrote this letter and close down the operation." During this conversation, Harrison told Mr. and Mrs. Hedges that he had taken part in writing the letter. Hedges did not wish to discuss the content of the letter with Harrison any further and the Hedgeses left for a dinner engagement.

On February 28, Bentley Hedges visited Respondent's branch office at 50 Penn Place in Oklahoma City. Hedges had coffee with employee Susan Stacy. Hedges

[2] Angela Hedges was stationed at one of Respondent's branch offices.

[3] Here, Respondent is a closed corporation with no board of directors. Thus, ultimate authority is vested in the stockholders.

showed Stacy the February 27 letter and asked if she had anything to do with it. Stacy told Hedges that she had helped write the letter but would not answer his question as to which employees were involved in writing the letter. Hedges told Stacy that the same thing had happened at the Company 4 or 5 years previously; that a few employees had tried to hold a kangaroo court, and that he would not have anything like that happen in his office. Hedges continued that if anyone was not happy with his operation she could turn in her timecard and keys. Stacy asked if Hedges wanted her to turn in her card and keys and Hedges answered "no." Stacy requested that Hedges meet with the employees "as individuals" and Hedges agreed to do so.

Hedges met with the following employees of the 50 Penn Place office: Janelle Finney, Mary Moorman, Richard Collins, and Stacy. Hedges told the group that he had received the February 27 letter but that he would not agree to a "kangaroo court." Hedges said he knew there were instigators. Moorman answered that generally everyone was unhappy. Hedges said that he had a similar uprising 3 or 4 years previously and had gotten rid of the troublemakers. He repeated that there would be no kangaroo court. Hedges told the employees that it was his company and would run it his way. He added that if anyone did not like it, he or she could leave. During the conversation Hedges said that Finney and Moorman were scheduled to get pay raises the next day, but now they would not receive raises.[4] During the meeting there was a complaint of the employees that a nonemployee girlfriend of Harrison's went on a "fam" trip;[5] the employees believed that they deserved such a benefit. The "girlfriend" was Jan Strickland, who went on a trip with Harrison approximately a month before becoming an employee of the Company.

On February 29, Harrison and employees Stacy, Moorman, Phyllis Mowdy, and Brenda Clink visited the Union's offices to seek assistance in dealing with their employer. The union officials told the employees that if they could muster more employee interest in their grievances, the Union would attempt to help.

On Saturday, March 1, Jan Strickland, who had begun working for Respondent on February 24,[6] was told by Hedges that she was "doing real well." Hedges said that Strickland "had learned more in one week than a lot of people learn in much more time." Hedges told Strickland that "trouble was brewing" and asked if she had heard anything. Strickland answered that she had not. Hedges said that he had a similar occurrence years ago and had gotten rid of the ring leaders. Strickland was told that she had done real well and just to stay with it.

On Monday, March 3, 14 of Respondent's employees visited the Union's offices after working hours. The employees signed union authorization cards. That same evening the Union sent Hedges a telegram which named the 14 employees, including Harrison and Strickland, who had signed authorization cards and requested that Respondent agree to union representation. The parties stipulated that Hedges received the telegram between 10 and 10:30 p.m. that same evening.

Upon leaving the Union's office, Harrison, Strickland, and Aimee Fallwell, an employee and niece of Alice Hedges, went to dinner. After this late dinner, Harrison drove Strickland and Fallwell back to Respondent's main office. Upon their arrival at the office at approximately 12:45 a.m., the employees were met by Bentley Hedges and his son-in-law Steve Hendricks.[7] Hedges opened Harrison's car door, Hedges said that there had been a meeting held that evening and that Harrison was fired. Harrison was told to return the company car, credit cards, and office keys. Hedges said to Harrison "I told you not to get involved with organizing employees and you have gone too far." Hedges then told Strickland that she was also fired.

Late that morning, pursuant to advice from a union official, Harrison went to Respondent's offices to see Hedges. Harrison asked Hedges if he had changed his mind about the discharge. Hedges said "no." Harrison then asked for the reason for his discharge but Hedges said that he could not say anything because the matter was in the hands of his attorney. Hedges then denied Harrison's request to stay and explain his files to the office secretary.

Strickland also asked Hedges if he had reconsidered firing her and was told "no." Strickland asked why she was being fired and Hedges said he could not talk about it at that time. Former employee Brenda Clink credibly testified that during the morning of March 4 she overheard a telephone conversation in which Hedges said he "had gotten rid of the troublemakers." Later that same morning, Clink overheard Hedges telling someone from the Associated Travel Network that "the same thing happened five years ago and [he] had gotten rid of the troublemakers." Hedges further stated that he had the "same problem every six months" and that he had "to get them back into line."

On March 7 the Union filed a representation petition in Case 16–RC–8116. The Regional Director for Region 16 held an election in which a majority of the employees cast ballots against representation by the Union. The certification of the results of the election issued on July 10, 1980.

During the pendency of the petition, Respondent issued to each employee a recapitulation of employee benefits. The General Counsel contends that in doing so Respondent announced additional insurance benefits to discourage its employees from becoming or remaining members of the Union or giving any assistance or sup-

[4] Finney did receive a raise in her paycheck, received on March 3, covering the last 2 weeks of February. Moorman did not receive a raise in her paycheck.

The complaint alleges that on March 3 and 17, Respondent granted wage increases in order to discourage its employees from becoming or remaining members of the Union or giving any assistance or support to it. There is no evidence that any employee received a raise on March 17. On March 3, Respondent granted wage increases, retroactive to the middle of February, to five employees.

[5] A "fam" or familiarization trip is a trip given to a travel consultant to help familiarize himself with the particular hotel, cruise, or tour. The availability of such trips was a major concern of Respondent's employees.

[6] As discussed in more detail *infra*, Strickland was not put on Respondent's payroll until March 3.

[7] Now married to Angela Hedges.

port to it. The General Counsel offered no evidence that the March 17 recapitulation offered benefits not previously enjoyed by Respondent's employees. The announcement itself appeared to list benefits the employees had received in the previous calendar year.

D. *Respondent's Defense to the Discharges*

In it defense, Respondent offered the testimony of Bentley Hedges that it discharged Strickland because two other employees, Phyllis Mowdy and Brenda Clink, would not have anything to do with her and, therefore, did not teach Strickland anything. Further Hedges testified that Strickland was a probationary employee that did not "cut the mustard." The record does not support this defense.

Strickland was hired by Bentley Hedges on February 22, 1980. Strickland was scheduled to go on Respondent's payroll on Monday, March 10. Beginning with Monday, February 25, Strickland began working at Respondent's main office on a nonpay basis in order to learn her new job.[8] On Friday, February 29, after working a week at on-the-job training, Strickland called Hedges and asked if she could go on the payroll earlier than March 10. Hedges answered that she could go on the payroll as soon as she wanted to. Thus, it was agreed that Strickland would begin working for pay on Monday, March 3. As indicated above, on March 1, Hedges complimented Strickland on her learning capacity and told her she was doing a "real good" job. Strickland was discharged after working 1 day. She was given no reason for the discharge and when later she asked Hedges for a reason, he declined to answer her.

Employees Mowdy and Clink credibly testified that they helped train Strickland during her short employment with the Company. Both Mowdy and Clink denied any ill feeling or animosity towards Strickland. Strickland also credibly denied any knowledge of her alleged difficulties with Mowdy and Clink. Further, Mowdy, Clink, and Strickland, all denied any knowledge of a probationary period for Strickland. Accordingly, I find the testimony of Bentley Hedges concerning Strickland's discharge to be unworthy of belief.

In support of the discharge of Harrison, Hedges testified that he and his wife held stockholders' meetings on February 29, and March 1 and 3, in which the subject of terminating Harrison was discussed. According to Hedges, on February 29 and March 1, his wife made a motion to terminate Harrison's employment but Hedges did not agree to the termination. However, on March 3, Hedges agreed to terminate Harrison. No explanation for this change of heart was offered. The reasons for the discharge as set forth in the minutes of the special meeting of stockholders are as follows:

> A motion was made to terminate George Harrison as Vice President of Bentley Hedges Travel Service, Inc. by Allice Hedges because of anti-company sentiments being generated in the office for unknown reasons. Obviously he is the only one in management to create this much discension [sic] among employees.
>
> Another contributing factor in this dismissal is an arrest for drunk driving in December 1979 in the company car provided to him that is only protected with $500,000.00 liability coverage. Any bodily injury accident involving this vehicle with accompaning [sic] drunk driving complaint would inititate [sic] a liability [sic] minimum to the corp. of one to two million dollars. Therefore for these reasons it is imperative that Mr. Harrison be terminated at once.

The arrest referred to above was known to Hedges immediately as he posted bail for Harrison. Further, Hedges told Harrison not to worry, that "everyone does it" and that Harrison "just got caught." Hedges never again mentioned the incident to Harrison. Harrison did not learn of this alleged reason for his discharge until September 1980, when it was advanced at an unemployment compensation hearing. Accordingly, Hedges' testimony regarding the discharge is not credited.

E. *Conclusions Regarding the Discharge of Strickland*

As found above, Strickland was in training for Respondent on a nonpay basis for 1 week and as an employee for 1 day. She received compliments on her ability from Bentley Hedges. Approximately 2 hours after Hedges received a telegram from the Union listing the names of the card signers he fired Strickland along with Harrison. Thereafter, Hedges would not give Strickland a reason for the discharge. The reasons offered by Hedges at the hearing were shown to be complete fabrications.

Respondent's lack of a credible reason for the discharge supports an inference that it had an unlawful motive for the discharge. See, e.g., *Bacchus Wine Cooperative, Inc.*, 251 NLRB 1552 (1980); *General Thermo, Inc.*, 250 NLRB 1260 (1980); *Party Cookies, Inc.*, 237 NLRB 612, 623 (1978); see also *Shattuck Denn Mining Corporation (Iron King Branch)* v. *N.L.R.B.*, 362 F.2d 466, 470 (9th Cir. 1966). I draw the inference that the motive for the discharge is one Respondent desires to conceal—a discriminatory and unlawful one.

The abruptness of the discharge and its timing are persuasive evidence as to Respondent's unlawful motivation. See, e.g., *N.L.R.B.* v. *Sutherland Lumber Company, Inc.*, 452 F.2d 67, 69 (7th Cir. 1971); *N.L.R.B.* v. *Montgomery Ward & Co., Inc.*, 554 F.2d 996, 1002 (10th Cir. 1977); *T. C. Bakas and Sons*, 232 NLRB 571, 574 (1977). Further support for the conclusion that the discharge was intended to halt the employees' efforts toward unionization is found in the repeated statements by Hedges that he "had gotten rid of the troublemakers" a few years ago.

Most importantly, shortly after the discharges of Strickland and Harrison, Hedges was twice overheard stating that he had "gotten rid of the troublemakers." Finally, Hedges' refusal to give Strickland a reason for her discharge further supports an inference of an unlawful motive. See, e.g., *M Restaurants, Incorporated, d/b/a the Mandarin*, 221 NLRB 264, 270 (1975) and cases cited therein. For all of the reasons I conclude that Strick-

[8] Strickland had quit her former employment but was receiving paid leave.

land's discharge was motivated by Respondent's desire to halt the union movement among its employees; hence by engaging in such conduct, Respondent violated Section 8(a)(3) and (1) of the Act.

F. *Conclusions Regarding the Discharge of Harrison*

As with the discharge of Strickland, there can be no serious doubt that Harrison was discharged because of his union activities. The abruptness and timing of the discharge, the statements concerning "getting rid of the troublemakers," the statements at the time of the discharge, and the later refusal to give him a reason for the discharge, support a finding that Harrison's discharge was motivated by Respondent's desire to halt the union movement among its employees.

Respondent's defense to the allegation that Harrison's termination was motivated by antiunion considerations deserves little attention. Harrison's arrest was known to Respondent more than 2 months prior to the discharge. Further, Hedges condoned Harrison's conduct by telling him "not to worry" and that "it could happen to anyone." The offering of such a patently false reason, which was first advanced 6 months after the discharge, supports the inference that the motive for the discharge is one which Respondent desires to conceal—an unlawful motive. However, Respondent's other reason for the discharge, "because of anti-company sentiments being generated in the office for unknown reasons," strikes directly at the heart of the matter. What Respondent called "anti-company sentiments" are, in fact, activities protected by Section 7 of the Act. In raising concerns over wages, benefits, and working conditions, the employees were engaged in concerted activities protected by Section 7 and Section 8(a)(1) of the Act. Further, in seeking representation from the Union, the employees were engaged in activities protected by Section 7 and Section 8(a)(3).[9] Accordingly, the central issue herein is whether Respondent violated the Act in discharging Harrison, a managerial employee, for reasons which would otherwise violate Section 8(a)(3) and (1) of the Act.

In *Nevis Industries*,[10] the Board held that it will find violations of Section 8(a)(1) of the Act and order supervisors reinstated along with employees where prounion supervisors were discharged along with prounion employees, not out of legitimate desire by the employer to assure loyalty of its supervisors, but in furtherance of an unlawful plan to rid the employer's facility of any and all union adherents—in short, where the supervisors' discharges were "an integral part of a pattern of conduct aimed at penalizing employees for their union activities and ridding the plant of union adherents." The Board deemed reinstatement of supervisors in such cases as "necessary in order to dissipate fully the coercive effects of such mass discharges." *Id.* at 1054–55.

In *Brothers Three Cabinets*[11] the Board further explained what it meant by "an integral part of a pattern of conduct aimed at penalizing employees for their union activities":

> It is, of course, a commonplace that Section 2(11) supervisors are not *per se* accorded protection under the Act from discharge or other discipline for engaging in union or concerted activity and, accordingly, the Board recognizes an employer's prerogative to discourage such activity among its supervisors. Thus, when an employer has discharged a supervisor out of a legitimate desire to assure the loyalty of its management personnel and its action was "reasonably adapted" to that legitimate end, the Board has found that such conduct is indeed permissible and does not violate Section 8(a)(1) of the Act. The mere fact that, as an incidental effect thereof, employees may fear the same fate will befall them if they engage in similar activity is insufficient to transform otherwise lawful conduct into a violation of Section 8(a)(1) of the Act.
>
> It is quite another matter, however, when an employer engages in a widespread pattern of misconduct against employees and supervisors alike. For, under those circumstances, the evidence may be sufficient to warrant a finding that the employer's conduct, as a whole, including the action taken against its supervisors, was motivated by a desire to discourage union activities among its employees in general and thus constitutes what the Board has characterized as a pattern of conduct aimed at coercing employees in the exercise of their Section 7 rights. By such acts the employer has exceeded the bounds of legitimate conduct intended to discourage union acitvity among its supervisors. And, more importantly, it has intentionally created an atmosphere of coercion in which employees cannot be expected to perceive the distinction between the employer's right to prohibit union activity among supervisors and their right to engage freely in such activity themselves. In this context, the coercive effect on employees resulting from the action taken against a supervisor cannot be viewed as unavoidable and "incidental" to the discharge of an unprotected individual. Thus, in recognition of the pervasive atmosphere of coercion intentionally created by the employer's total course of conduct and its direct effect on employees, the Board has found that restoration of the *status quo ante* is required to fully dissipate this coercive effect and must necessarily encompass reinstatement of all individuals affected, including supervisors.

Applying the above principles to the case,[12] the evidence clearly supports the conclusion that Harrison's dis-

[9] I do not credit either Bently Hedges' testimony nor the stockholders' minutes which urge that the meeting took place prior to Hedges' receipt of the Union's request for representational rights. In view of the entire record, I need not, and do not, credit Hedges' self-serving testimony in this regard. See, e.g., *N.L.R.B. v. Pacific Grinding Wheel Co., Inc.*, 572 F.2d 1343, 1347 (9th Cir. 1978).

[10] *Nevis Industries, Inc., d/b/a Fresno Townehouse*, 246 NLRB 1053 (1979).

[11] *DRW Corporation d/b/a Brothers Three Cabinets*, 248 NLRB 828 (1980).

[12] Although Harrison was a managerial employee and not a supervisor, I find *Nevis Industries* and *Brothers Three Cabinets* to be applicable to the instant case.

charge, like Respondent's other unlawful conduct, was motivated by its desire to halt the union movement among its employees and was the principal element in a plan designated to achieve that unlawful end. As found herein, Respondent engaged in threats, interrogation, and other unlawful conduct against its employees, including the discharge of employee Strickland. Most importantly, shortly before the discharges, Hedges repeatedly told employees that he had previously put a stop to his employees' concerted activities by "getting rid of the troublemakers." The discharges of Strickland and Harrison, following on the heels of such statements, implied that other employees who engaged in like conduct would be similarly discharged. Under these circumstances, I find that the discharges of Strickland and Harrison were designed to defeat the union movement among Respondent's employees. Accordingly, I find that Harrison's discharge violated Section 8(a)(1) of the Act.

G. *Conclusions Regarding 8(a)(1) Issues*

1. The complaint alleges that on February 27, Bentley Hedges interrogated Harrison about his union activities. The complaint further alleges that on February 27, Alice Hedges threatened Harrison that Respondent would shut down the business and fire all employees if they became or remained members of the Union, and created the impression of surveillance of the union activities and desires of Respondent's employees. As discussed above, the only individuals present of this conversation were managerial employees, excluded from the coverage of the Act. Accordingly, no violation of Section 8(a)(1) of the Act can be found and I, therefore, recommend that these allegations of the complaint be dismissed.

2. The complaint alleges that on or about February 28, Bentley Hedges threatened employees with discharge and threatened to withhold wage increases if they became or remained members of the Union or gave any assistance or support to it. As discussed above, Hedges did not obtain knowledge of the employees' union activities until the evening of March 3. The instant complaint allegations refer to the February 28 meeting that Hedges held with the employees of the 50 Penn Place branch office. The credible evidence establishes that during the meeting Hedges discussed the unsigned letter sent by employees asking for a meeting to discuss wages, benefits, and working conditions. During the meeting, Hedges stated that it was his company and he would run it his way. Hedges added that if anyone did not like it, she could get out. Further, Hedges repeatedly stated that he had the same problem years ago and "had gotten rid of the troublemakers." Thus, under the circumstances, I find that Hedges implied that employees would be discharged for engaging in concerted activities protected by Section 7 of the Act. Accordingly, I find that by this conduct, Respondent violated Section 8(a)(1) of the Act.

In the same conversation on February 28, Hedges told the employees that Janelle Finney and Mary Moorman were scheduled to get pay raises, and implied that because of the February 27 letter they would not receive the scheduled raises. Under these circumstances, I find that Hedges implied that employees would forfeit scheduled pay raises if they engaged in concerted activities protected by Section 7 of the Act. Accordingly, I find that Respondent violated Section 8(a)(1) of the Act.

3. The complaint, as amended at the hearing, alleges that on or about March 1, Bentley Hedges interrogated Strickland about her union activities and the union activities of other employees. As discussed above, on March 1, Hedges told Strickland that "trouble was brewing" and asked if she had heard anything about it. Hedges told Strickland that years ago he had a similar experience and he had "gotten rid of the ring leaders." This event occurred prior to any company knowledge of union activities. Hedges was seeking to learn the identity of those involved with the unsigned letter of February 27. Under all of the circumstances, including the implied threat that the leaders would be terminated, I find that Hedges coercively interrogated Strickland concerning the protected concerted activities of Respondent's employees. By such conduct Respondent violated Section 8(a)(1) of the Act.

4. The complaint alleges that on or about March 3 and March 17, Respondent granted wage increases to discourage its employees from becoming or remaining members of the Union. As discussed above, there is no evidence that any employee received a wage increase on or about March 17. With regard to March 3, the wage increases were granted prior to any knowledge of union activity. A finding that Respondent granted these pay increases prior to learning of the employees' union activities precludes a finding that the wage increases were intended to discourage such activity. Hedges learned from the February 27 letter and his meeting with the employees at 50 Penn Place of the employees' dissatisfaction with their wages. At the meeting Hedges indicated that raises were scheduled for certain employees and that he would review the wage schedule. On the first workday thereafter, paychecks were distributed which included wage increases for five employees. It was not until 10–10:30 p.m. that Hedges learned of the union activities. Accordingly, I find that the wage increases of March 3 did not violate Section 8(a)(1) of the Act. See *The Fireside House of Centralia*, 233 NLRB 139, 140 (1977).

5. The complaint alleges that on or about March 17, Respondent announced additional insurance benefits to discourage its employees from engaging in union activities. As discussed above, there is no evidence that Respondent's announcement of that date detailed any benefit not previously enjoyed by employees. Rather, the announcement appears to be a recapitulation of the benefits received by employees in calendar year 1979. Accordingly, I recommend dismissal of this allegation of the complaint.

6. The complaint alleges certain violations of Section 8(a)(1) of the Act by Alice Hedges and Angela Hedges Hendricks in March 1980. The General Counsel offered no evidence in support of said allegations. However, he improperly argues in his brief that the only witness to the above allegations was a niece of Alice Hedges who refused to testify. There is no record evidence to support that representation in the brief. Regardless of the lack of evidence, the General Counsel urges a finding of a violation based on the fact that Mrs. Hedges and Hendricks,

although in the courtroom, did not take the stand to deny the complaint allegations. Such an argument is fundamentally incorrect. The General Counsel has the burden of proof on these issues and has failed to meet that burden. Accordingly, I recommend dismissal of these allegations of the complaint.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent has engaged in unfair labor practices in violation of Section 8(a)(1) of the Act by threatening to discharge employees if they acted concertedly in attempting to discuss, or seek improvements, in regard to wages, benefits, or working conditions; by threatening to withdraw scheduled pay increases for employees if they acted concertedly in attempting to discuss, or seek improvements, in regard to wages, benefits, or working conditions; by interrogating an employee concerning the concerted activities of employees in attempting to discuss, or seek to improve, their wages, benefits, or working conditions; and by unlawfully discharging George Harrison on March 4, 1980.

4. Respondent has engaged in unfair labor practices in violation of Section 8(a)(3) and (1) of the Act by unlawfully discharging Jan Strickland on March 4, 1980.

5. The unfair labor practices specifically found above are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

6. Respondent has not violated the Act in any respect other than that specifically found.

THE REMEDY

Having found that Respondent engaged in certain unfair labor practices, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the purposes of the Act.

Having found that Respondent discharged employee Jan Strickland in violation of Section 8(a)(3) and (1) of the Act, and managerial employee George Harrison in violation of Section 8(a)(1) of the Act, I shall order Respondent to offer each discriminatee immediate and full reinstatement to her or his former position of employment or, if that position no longer exists, to a substantially equivalent position, without prejudice to her or his seniority or any other rights or privileges previously enjoyed. Additionally, Respondent shall be required to make Strickland and Harrison whole for any loss of earnings they may have suffered by reason of their unlawful discharges on March 4, 1980, with backpay to be computed on a quarterly basis, making deductions for interim earnings, and with interest to be paid on the amount owing and to be computed in the manner prescribed in *F. W. Woolworth Company*, 90 NLRB 289 (1950), *Florida Steel Corporation*, 231 NLRB 651 (1977), and *Olympic Medical Corporation*, 250 NLRB 146 (1980). See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

Since Harrison was involved in working with employees at all of Respondent's locations and his discharge was intended to halt the organizing campaign at all of Respondent's locations, it can be inferred that the unfair labor practices herein affected the employees at all of Respondent's locations. Accordingly, I shall recommend an order requiring Respondent to post notices at all of its offices. See *Texas Gulf Sulphur Company*, 195 NLRB 13 (1972), enfd. 463 F.2d 778 (5th Cir. 1972).

[Recommended Order omitted from publication.]